



NUREG-1830, Vol. 5

Annual Report

FY 2008

Office of Investigations



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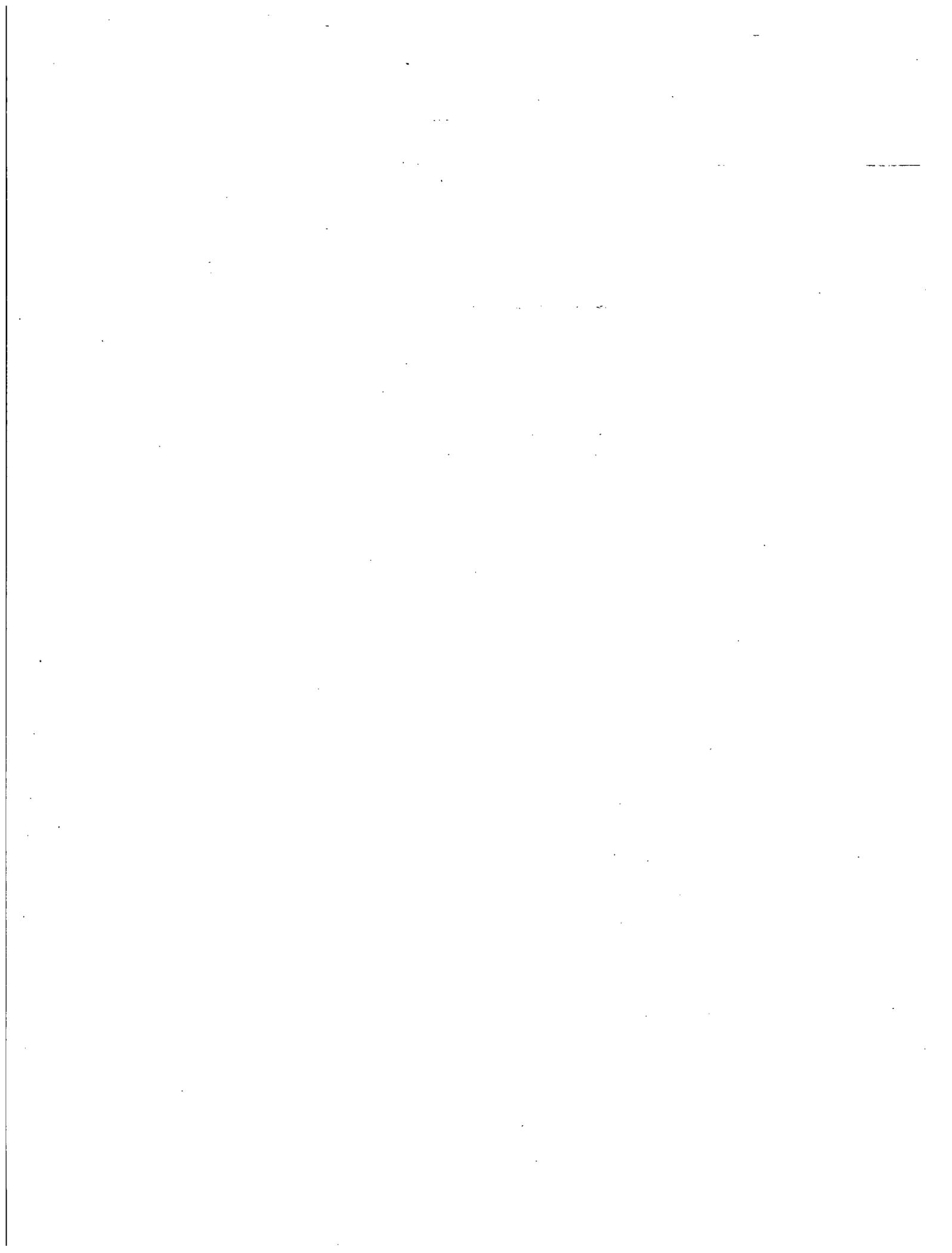
Manuscript Completed: February 2009
Date Published: February 2009

Office of Investigations



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ABSTRACT

This report provides the Commission with an overview of Office of Investigations (OI) activities, mission and purpose, along with the anatomy of case inventory with highlights of significant cases completed by the Nuclear Regulatory Commissions (NRC) OI during Fiscal Year (FY) 2008 (reference SRM COMJC-89-8, dated June 30, 1989). This is the 20th OI Annual Report.

FISCAL YEAR 2008 HIGHLIGHTS

In FY 2008, OI continued to focus on increasing effectiveness, efficiency, and productivity in management, organizational, and process-related activities.

Significant achievements during FY 2008: -

Of the 114 investigations closed by OI, 95% developed sufficient information to reach a conclusion regarding wrongdoing. This exceeded OI's performance goal of 90%

- Of the 108 investigations closed with sufficient information to reach a conclusion (substantiated or unsubstantiated) regarding wrongdoing, 94% were closed in 10 months or less. This exceeded OI's performance goal of 80% for reactor investigations and 85% for materials investigations.
- Of the 77 Assists to Staff closed, 91% were completed within 90 days, which exceeded OI's performance goal of 80%.
- OI processed 71 actions resulting from FOIA requests during FY 2008.
- OI supported the U.S. Department of Justice (DOJ) efforts in criminal prosecutions and trials. OI referred 48 investigations for prosecutorial review.
- On September 9, 2008, during its annual awards ceremony, the DOJ Environmental and Natural Resources Division presented awards to an NRC team comprised of two OI: Region III (RIII) Special Agents and a RIII Mechanical Engineer in recognition of their outstanding performance in the Davis Besse case.
- OI participated in various DOJ Anti-Terrorism Advisory Councils related to national security concerns and counterterrorism.
- During 2008, OI was selected to undergo a program review using the Lean Six Sigma (LSS) process improvement methodology. The final LSS report made several recommendations that should help OI to enhance its current investigative process. The report also recognized ongoing process improvement strategies that had been initiated by OI. The long-term trends from the data research point to OI operating within its current process and to focusing on continuous process improvement efforts.
- The LSS report of the OI program review is available for viewing on the NRC internal website <http://nrcweb:8600/oedo/LSSP/index.html>.

INTRODUCTION AND OVERVIEW

MISSION AND AUTHORITY

As stated in the NRC's Strategic Plan for FY 2008-2013, the NRC's mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC's vision is excellence in regulating the safe and secure use and management of radioactive materials for the public good. The mission and vision provide the framework for the agency's strategies and goals, which in turn guide the allocation of resources across the agency. OI aligns with the agency's regulatory programs and strategic values to provide for the safe use of radioactive materials and nuclear fuels for beneficial civilian purposes that are enabled by the agency's adherence to the principles of good regulation-independence, openness, efficiency, clarity and reliability, and additionally, by providing regulatory actions that are effective, realistic and timely.

The Commission has delegated to the Director of OI the authority to take the necessary steps to accomplish the OI mission, as described in Title 10 of the Code of Federal Regulations (CFR), Part 1, Section 1.36 (1998). See Section 161(c) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201 (c)); and Section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846). OI investigative jurisdiction extends to the investigation of alleged wrongdoing by licensees, certificate holders, permittees, or applicants, by contractors, subcontractors, and vendors of such entities, and/or by management, supervisory, and other employed personnel of such entities who may have committed violations of the Atomic Energy Act, the Energy Reorganization Act, and rules, orders, and license conditions issued by the Commission there under.

Additionally, during the course of an investigation, OI may discover potentially safety-significant issues that are not related to wrongdoing. In these instances OI forwards this information to the technical staff in a timely manner for appropriate action. OI also provides assistance to the NRC staff when requested. Generally, "Assists to Staff" are matters of regulatory concern for which the staff has requested OI's investigative expertise but which do not involve a specific indication of wrongdoing.

THE OFFICE OF INVESTIGATIONS

The Director of OI reports directly to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT) along with supporting the reactor and materials programs.

OI consists of four regionally based field offices headed by Field Office Directors (FODs) who report to OI Headquarters. In FY 2008, on average, there were 32 special agents (Federal Criminal Investigators) and 8 operational support staff nationwide. The average number of years of specialized Federal law enforcement experience for an OI special agent in FY 2008 was approximately 19 years.

The Office of Investigations develops and implements policies, procedures, and quality control standards for investigations of licensees, applicants, and their contractors or vendors. OI conducts thorough, quality, and timely investigations of wrongdoing by licensee's certificatees and their contractors, in accordance with the President's Council on Integrity and Efficiency (PCIE) Quality Standards for Investigations. OI makes referrals of substantiated criminal cases to the Department of Justice, plans, coordinates, directs, and executes its administrative affairs, including the development and maintenance of a management information system. OI maintains current awareness of inquiries and formal investigations. OI keeps Commission principals currently informed of matters under investigation as they affect public health and safety matters. OI coordinates liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest.

FIELD OFFICE REVIEW VISITS

Field office review visits (FORVs) are annual self-assessments of each field office to support the continuous process improvement of OI's investigative program. FORVs assess three major focus areas: operations, management and administration.

Each FORV commences with a meeting of field office staff to discuss current OI Headquarters initiatives and activities; policy/procedural focus; and special items of interest. Also during the self-assessments, OI personnel are interviewed to obtain timely feedback regarding operational concerns and any issues of particular interest to the employee. Additionally, the FORV team meets with internal stakeholders, for example, Regional/Deputy Regional Administrator, Regional Counsel, Enforcement Coordinator, Office Allegation Coordinator and any other regional staff deemed appropriate. These meetings are designed to solicit input regarding ways to improve the quality, effectiveness, and efficiency of OI's performance.

At the conclusion of the FORVs, exit briefings are conducted with the Field Office Directors to discuss the findings and recommendations of the team. A final OI Headquarters review of the team's findings is conducted to identify best practices with a view towards continuous process improvement.

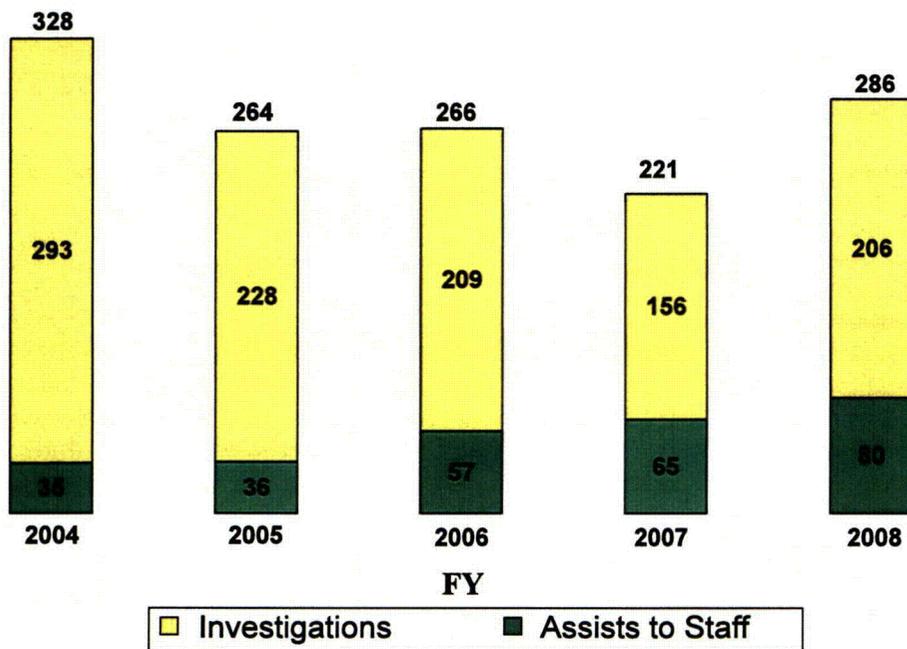
CASES

Case Inventory

Figure 1 shows the OI case inventory that reflects all investigations and Assists to Staff conducted during the FYs indicated. Generally, Assists to Staff are matters of regulatory concern for which the staff has requested OI's investigative expertise but which do not involve specific indications of wrongdoing. The total case inventory in FY 2008 was 286. The total includes 206 investigations, 56 of which were carried over from FY 2007. Also included are 80 Assists to Staff, 8 of which were carried over from FY 2007.

Figure 1

Case Inventory



* Cases carried over from previous year, plus cases opened in current year

The total number of cases in the OI inventory during FY 2008 was 286, a 29% increase from 221 in FY 2007.

CASES OPENED

Table 1 shows the number of cases opened by category during FYs 2004 through 2008. In FY 2008 there was a 31% increase in cases opened from FY 2007. Violations of other NRC regulatory requirements increased by 47%, and there was a 24% increase in the number of suspected material false statements. Discrimination investigations increased by 28% and Assists to Staff increased by 16%. OI opened 222 cases in FY 2008 in the categories listed below:

Table 1. Cases Opened by Category

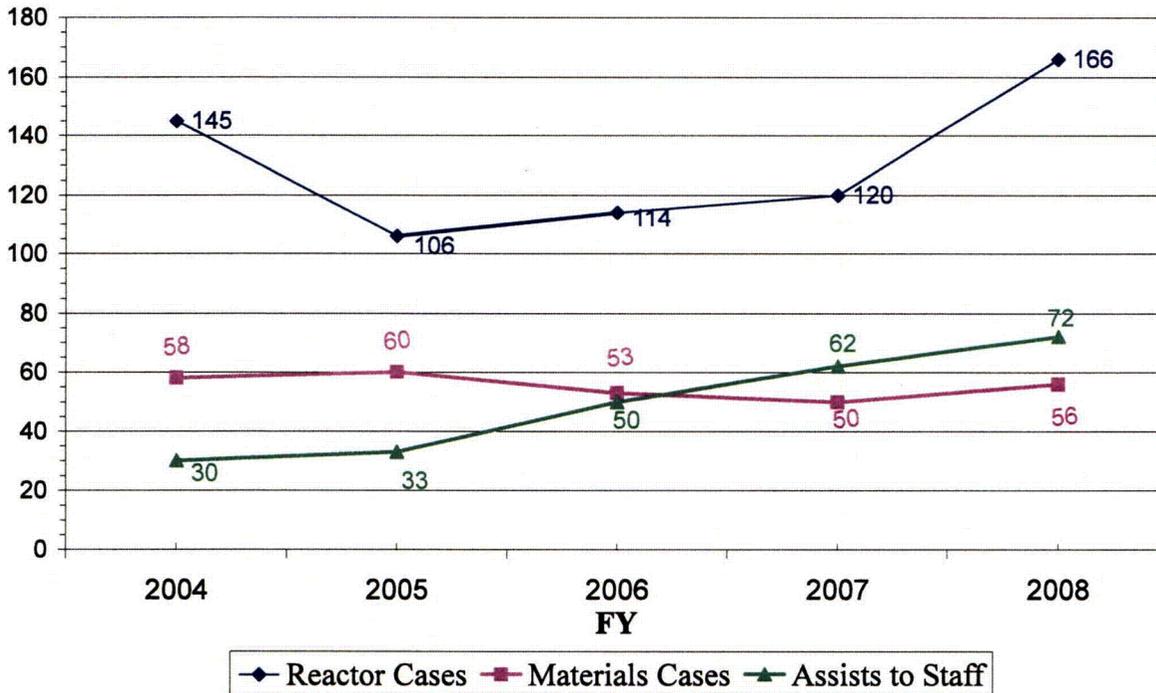
Category	FY2004	FY2005	FY2006	FY2007	FY2008
Total	203	166	167	170	222
Materials False Statement	41	39	17	17	21
Violations of Other NRC Regulatory Requirements	63	54	48	66	97
Discrimination	69	40	52	25	32
Assists to Staff	30	33	50	62	72

Note: During FY 2008, NRC received 639 allegations of potential violations of its rules, regulations, or requirements. The 639 allegations represent a 15% increase from the 558 received in FY 2007.

The graph in Figure 2 shows the distribution of cases opened during FYs 2004 through 2008 for the reactor and materials programs. From FY 2007 to FY 2008, the overall reactor-related cases increased 38% with a 51% increase in reactor investigations and a 19% increase in reactor-related Assists to Staff. Materials cases increased overall by 12% with a 14% increase in materials investigations and a 7% increase in materials-related Assists to Staff.

Figure 2

Cases Opened by Reactor / Materials



Cases Closed

Table 2 shows the number of cases closed by category during FYs 2004 through 2008. The cases closed during FY 2008 represent a 22% increase from the number closed in FY 2007. Material false statement investigations comprised 6% of the closed cases in FY 2008, discrimination investigations 13%, investigations involving other violations of NRC regulatory requirements 40%, and Assists to Staff 40%. OI closed 191 cases in FY 2008 in the categories listed below:

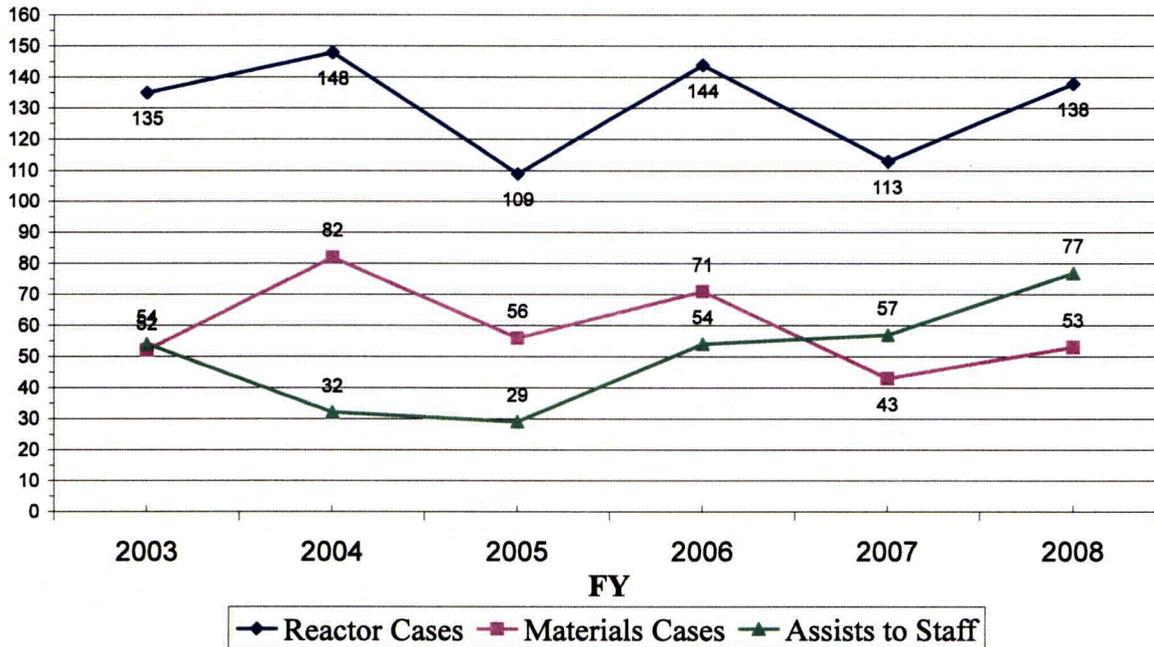
Table 2. Cases Closed by Category

Category	FY2004	FY2005	FY2006	FY2007	FY2008
Total	230	165	215	156	191
Materials False Statement	51	32	28	10	12
Violations of Other NRC Regulatory Requirements	66	52	67	59	77
Discrimination	81	52	66	30	25
Assists to Staff	32	29	54	57	77

The graph in Figure 3 shows the distribution of cases closed between Fiscal Years 2004 and 2008 for the reactor and materials programs. From FY 2007 to FY 2008, the overall reactor-related cases increased 22% accompanied by an 8% increase in reactor investigations and a 45% increase in reactor-related Assists to Staff. Materials cases increased 23% overall accompanied by a 32% increase in materials investigations and a 7% increase in materials-related Assists to Staff during the same period.

Figure 3

Cases Closed by Reactor / Materials



Of the 191 cases closed in FY 2008:

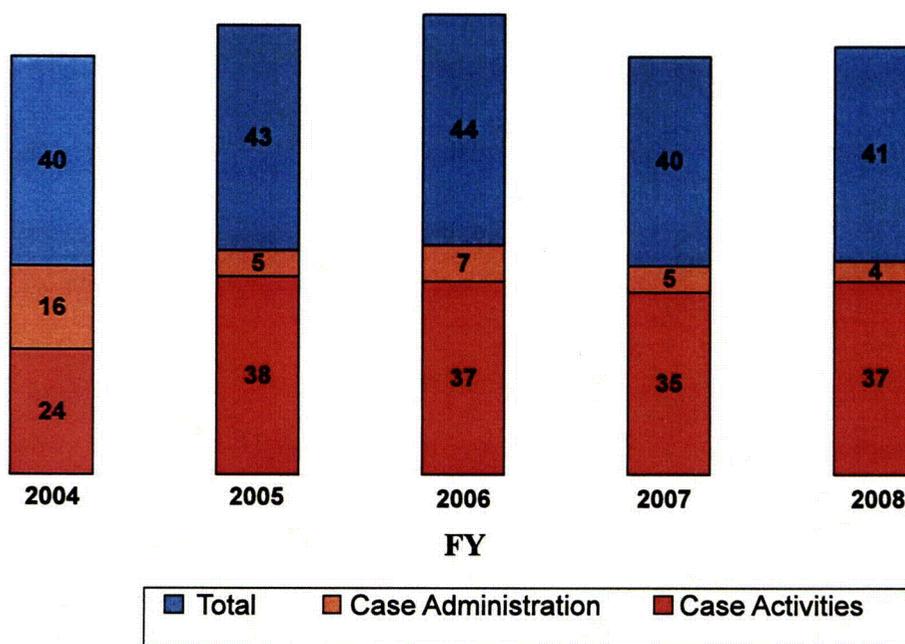
- 48 investigations were closed after substantiating one or more of the allegations of wrongdoing.
- 60 investigations were closed after wrongdoing was not substantiated
- 6 investigations were closed for administrative reasons.
- 77 of the total number of cases closed were Assists to Staff.

MANAGEMENT OF CASES

The total case-specific staff hours in Figure 4 shows an increase from FY 2007 to FY 2008 (from 40,000 to 41,000 investigative hours). In FY 2008 case activities (planning, field work, and analyzing information) increased while hours towards case administration (FOIA and other miscellaneous activities) decreased.

Figure 4

Case Specific Staff Hours



SIGNIFICANT INVESTIGATIONS

PEACH BOTTOM

OI conducted an investigation regarding alleged violations of the site security plan and fitness-for-duty (FFD) program at Peach Bottom Atomic Power Station (PBAPS) by multiple armed security officers (SOs) being inattentive to duty on multiple occasions during 2007. Based on the evidence developed by OI, NRC concluded that multiple SOs contracted by the Wackenhut Corporation deliberately violated FFD procedures by choosing to be inattentive and/or not reporting their observations of inattentiveness in the "ready room" to their supervision at PBAPS, causing the licensee to be in violation of the site security plan. The licensee, Exelon Nuclear, was issued a Severity Level III Notice of Violation (NOV) and a civil penalty in the amount of \$65,000. The civil penalty has been paid to the U.S. Treasury Department. In addition, a separate Security Level III NOV was issued to Wackenhut without a civil penalty.

ST. LUCIE NUCLEAR PLANT

An OI investigation substantiated that a Security Operations Coordinator for Wackenhut, willfully violated the procedural requirements of the St. Lucie Security Force Instructions (SFI) 2100 by allowing an unsearched trailer into the Protected Area (PA) that did not meet the exemption allowances in the procedure and then failed to properly search the trailer when it arrived at its final destination in the PA at St. Lucie. The Security Operations Coordinator admitted culpability during an OI interview. As a result, a Confirmatory Order was issued to Florida Power and Light on October 20, 2008.

SEQUOYAH NUCLEAR PLANT

An OI investigation was initiated to determine whether a former Security Sergeant, Pinkerton Government Services (PGS), Sequoyah Nuclear Plant, willfully falsified a Security Post Turnover Sheet, and to determine whether the former Security Sergeant willfully concealed the fact that he/she failed to inspect a response weapon, ammunition, and magazine assigned to individual security personnel and posts to ensure accountability. The investigation substantiated that the contract Security Sergeant deliberately falsified the Security Post Turnover Sheet to conceal that he/she failed to verify the ammunition in the weapon as required by licensee weapon's accountability procedures. Enforcement action included the issuance of a Confirmatory Order to the Tennessee Valley Authority (TVA) and issuance of a Severity Level III NOV to the Security Sergeant.

NUCLEAR FUEL SERVICES (NFS)

OI substantiated that a senior executive of NFS, willfully violated the provisions of the NFS Fitness for Duty (FFD) Procedure by consuming alcohol within the prohibited five-hour

time period prior to reporting to work on March 9, 2006. Further, OI substantiated that two Security Managers at NFS willfully failed to take actions required by the FFD Procedure and the Behavioral Observation Program to prevent a potentially impaired worker (the senior executive) from entering the Protected Area at NFS. OI also substantiated that NFS personnel willfully failed to report the violation within 24 hours to the NRC as required. Additional OI investigative effort concluded in August 2008, and substantiated that the NRC's request for information dated March 31, 2006, contained incomplete and inaccurate information and that an executive willfully provided the response containing the incomplete and inaccurate information to the NRC. Enforcement action is pending.

DAVIS BESSE

As previously reported in OI's FY 2006 Annual Report, an investigation was initiated based on multiple allegations of willful misconduct by FirstEnergy Nuclear Operating Company (FENOC) personnel, including a contractor at the Davis-Besse Nuclear Power Plant (Davis-Besse), regarding the reactor vessel head. The primary allegation investigated was whether FENOC personnel deliberately provided incomplete and/or inaccurate information in its responses to NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles." Based on evidence developed during this investigation, the case was referred to the Department of Justice (DOJ) for prosecutorial review and a Special Grand Jury was convened. OI and NRC technical staff provided support to the Environmental Crimes Section of DOJ and to the U.S. Attorney's Office for the Northern District of Ohio in response to the Grand Jury investigation.

On January 20, 2006, DOJ announced that FENOC agreed to pay \$28 million in penalties, restitution, and community service projects as part of an agreement to defer prosecution of the company. This was the largest monetary penalty in the history of the commercial nuclear power industry. The terms of the deferred prosecution agreement involved an admission of culpability by FENOC, in which the company admitted that the government could prove that its employees, acting on its behalf, knowingly made false representations to the NRC in an attempt to persuade the NRC that Davis-Besse was safe to operate. In addition, a design engineer accepted and entered into a deferred prosecution agreement with the government. Further, two former employees and a former contractor of FENOC were charged in a five-count indictment for allegedly preparing and providing false statements to the NRC. The indictment alleged the individuals falsely represented to the NRC that past inspections of the plant were adequate to assure safe operation.

The two former employees and a former contractor of FENOC who were charged in an indictment had their cases heard in U.S. District Court. On October 31, 2007, a former manager at Davis-Besse was convicted by a federal jury on three counts of a five-count indictment in U.S. District Court, Northern District of Ohio. The former manager was found guilty of concealing information from and making false statements to the NRC. Also on October 31, 2007, the former contractor was acquitted of similar charges. At sentencing on May 1, 2008, the former manager was: (1) fined \$2500 for each count; (2) given 3 years probation on each count, to be served concurrently; (3) given 4 months home confinement whereby defendant had to wear an electronic monitor; (4) given 200 hours of community service; (5) banned from the nuclear industry for 3 years; and (6) given a \$300 court fee. On

August 26, 2008, the remaining former engineer at Davis-Besse was convicted by a federal jury on three counts of a five-count indictment in U.S. District Court, Northern District of Ohio. The engineer was found guilty on one count of willfully concealing information from the NRC and was found guilty on two counts of willfully making false statements to the NRC. Sentencing for this engineer is pending.

The NRC initiated enforcement action against FENOC and five individuals following its review of the OI investigation. The NRC issued nine cited violations of NRC requirements and levied a civil penalty of \$5.45 million to FENOC. This civil penalty was the largest fine in NRC history. The failure to comply with NRC regulations and the failure to provide accurate information led to a 2-year shutdown of the Davis-Besse plant for extensive repairs, major management changes, and improvements to the safety culture of the plant. Enforcement actions against the corporation have been concluded.

MISTRAS HOLDING CORPORATION

An OI investigation substantiated that a former radiographer willfully violated radiation safety regulations and procedures while performing radiographic surveys in Philadelphia, PA, on January 20, 2007. Mistras participated in the NRC's post-investigation Alternative Dispute Resolution program (ADR). As part of the ADR settlement agreement, the NRC issued a Confirmatory Order to Mistras Holding Group in October 2008, documenting the company's commitments to improve safety practices in radiography work. The Confirmatory Order makes the company's commitments conditions of its NRC license. Additionally, a Severity Level III NOV was issued to the former radiographer for willfully violating radiation safety regulations and procedures during radiographic operations.

GLOBAL X-RAY AND TESTING CORPORATION

An OI investigation substantiated that a radiographer, employed by Global X-Ray and Testing Corporation (Global), willfully provided false and inaccurate information to the NRC regarding his exposure during a 2006 incident. Additionally, this investigation substantiated that Global's Radiation Safety Officer (RSO) willfully failed to provide complete and accurate information in a 30-day report submitted to the NRC. The incident occurred in April 2006, on the Lonestar Horizon Laybarge in which a 104 curie iridium-192 source could not be retracted to the fully shielded position.

Based upon evidence developed during the OI investigation, NRC issued a Confirmatory Order to Global as a result of an alternative dispute resolution mediation session. The commitments in the Confirmatory Order were made by Global as part of a settlement agreement between Global and the NRC concerning four apparent violations. Global agreed to take extensive corrective actions, in addition to corrective actions already taken, to prevent these violations from recurring. The NRC also issued a Severity Level III NOV to the RSO for a deliberate violation for failure to provide complete information in a report regarding the radiation exposure to a radiographer involved in the incident.

ALASKA INDUSTRIAL X-RAY

This investigation, which was first reported in OI's FY 2007 Annual Report, determined that Alaska Industrial X-Ray, Inc. (AIX) radiographers, including its Radiation Safety Officer (RSO) and assistants violated NRC licensing requirements by performing industrial radiographic operations at a job site. Based upon evidence developed during the OI investigation, NRC issued an immediately effective Order Suspending Licensed Activities to AIX.

On August 20, 2008, the NRC also issued an NOV and civil penalty in the amount of \$20,800, and an Order Modifying License (Effective Immediately) for deliberate violations which were categorized as a Severity Level II violation. Further, the former RSO and a radiographer were issued Orders prohibiting their involvement in licensed activities for 3 years and 1 year, respectively. In addition, two other radiographers were issued NOV's for deliberately violating the two-person rule.

ALASKA RIM ENGINEERING

An OI investigation substantiated that Alaska Rim Engineering willfully possessed and utilized a portable nuclear gauge without an NRC license from March 2003 through May 2007. Additionally, Alaska Rim Engineering, Inc. failed to provide complete and accurate information to the NRC by submitting a license application to the NRC in May 2007 and stating their intention to purchase the portable gauge when, in fact, they had purchased the portable gauge in May 2003. The NRC issued an NOV and exercised enforcement discretion in lieu of citing a Severity Level III violation with civil penalties. The NRC also issued a Severity Level III NOV to the principal engineer for a deliberate violation for failure to provide complete or accurate information in the license application.

ALPHA OMEGA SERVICES (AOS)

This investigation, which was first reported in OI's FY 2006 Annual Report, determined that the Director of Operations/Radiation Safety Officer (RSO) for Alpha Omega Services (AOS) deliberately provided materially inaccurate information to an NRC licensee and to a contractor for the licensee. The Director of Operations/RSO signed a maintenance checklist indicating that a transportation package was in compliance with the NRC Certificate of Compliance and approved for use, when he knew it was not. Additionally, AOS deliberately caused the NRC licensee to be in violation of NRC requirements when the licensee exported licensed material in nonconforming packages.

On December 20, 2007, an NOV and Proposed Imposition of Civil Penalty in the amount of \$19,200 were issued for a Severity Level II violation. On February 13, 2007, the Director of Operations/RSO pled guilty in federal court in the Central District of California to a one count indictment (18 USC 1001) for making false statements about a shipping package used for the importation of radioactive materials. On November 24, 2008, the Director of Operations/RSO was sentenced to 1 year of probation and a \$2,500 fine.

SOURCE PRODUCTION AND EQUIPMENT COMPANY (SPEC)

This investigation, which was first reported in OI's FY 2006 Annual Report, determined that Source Production and Equipment Company, Inc. (SPEC) deliberately violated NRC regulations regarding the transportation of NRC licensed material without a license. The investigation determined that a contract employee for SPEC did not comply with NRC Certificate of Compliance requirements and falsified a required inspection of the transportation package.

On July 14, 2008, an NOV and Proposed Imposition of Civil Penalty in the amount of \$9,600 were issued for a Severity Level II problem. The proposed \$9,600 fine was issued for failing to comply with NRC safety requirements regarding the use of a specific shipping package for transporting radioactive material. On September 8, 2008, the contract employee was issued an NRC Order limiting his activities into NRC regulated activities for a period of 5 years. On November 6, 2008, the contract employee pled guilty in federal court in the Central District of California to a one count indictment (18 USC 371) regarding conspiracy. Sentencing is pending.

SIGNIFICANT ASSIST TO STAFF

PEACH BOTTOM

In September 2007, the NRC was provided a video tape from television station, WCBS, New York, New York, of inattentive armed security officers allegedly at the Peach Bottom Atomic Power Station. NRC Region I responded by convening an Augmented Inspection Team (AIT) to inspect/investigate the matter. At the request of senior regional management, OI participated in the AIT for the purpose of interviewing the involved individuals in order to assist the staff in fully understanding the circumstances surrounding the event(s). Significant resources were expended by the technical and OI staffs in response to these event(s) resulting in the issuance of a Confirmatory Action Letter (CAL), a White finding, and increased inspection activities. Additionally, OI initiated multiple, separate investigations and/or Assists to Staff during the course of the AIT and subsequent AIT follow-up actions.

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

NUREG 1830, Vol. 5

2. TITLE AND SUBTITLE

Office of Investigations Annual Report FY 2008

3. DATE REPORT PUBLISHED

MONTH

YEAR

February

2009

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

6. TYPE OF REPORT

Annual

7. PERIOD COVERED (Inclusive Dates)

10/01/2007 to 9/30/2008

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

Office of Investigations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This report describes Office of Investigations case activities during FY 2008.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

Office of Investigations
FY 2008
Annual Report

13. AVAILABILITY STATEMENT

unlimited

14. SECURITY CLASSIFICATION

(This Page)

unclassified

(This Report)

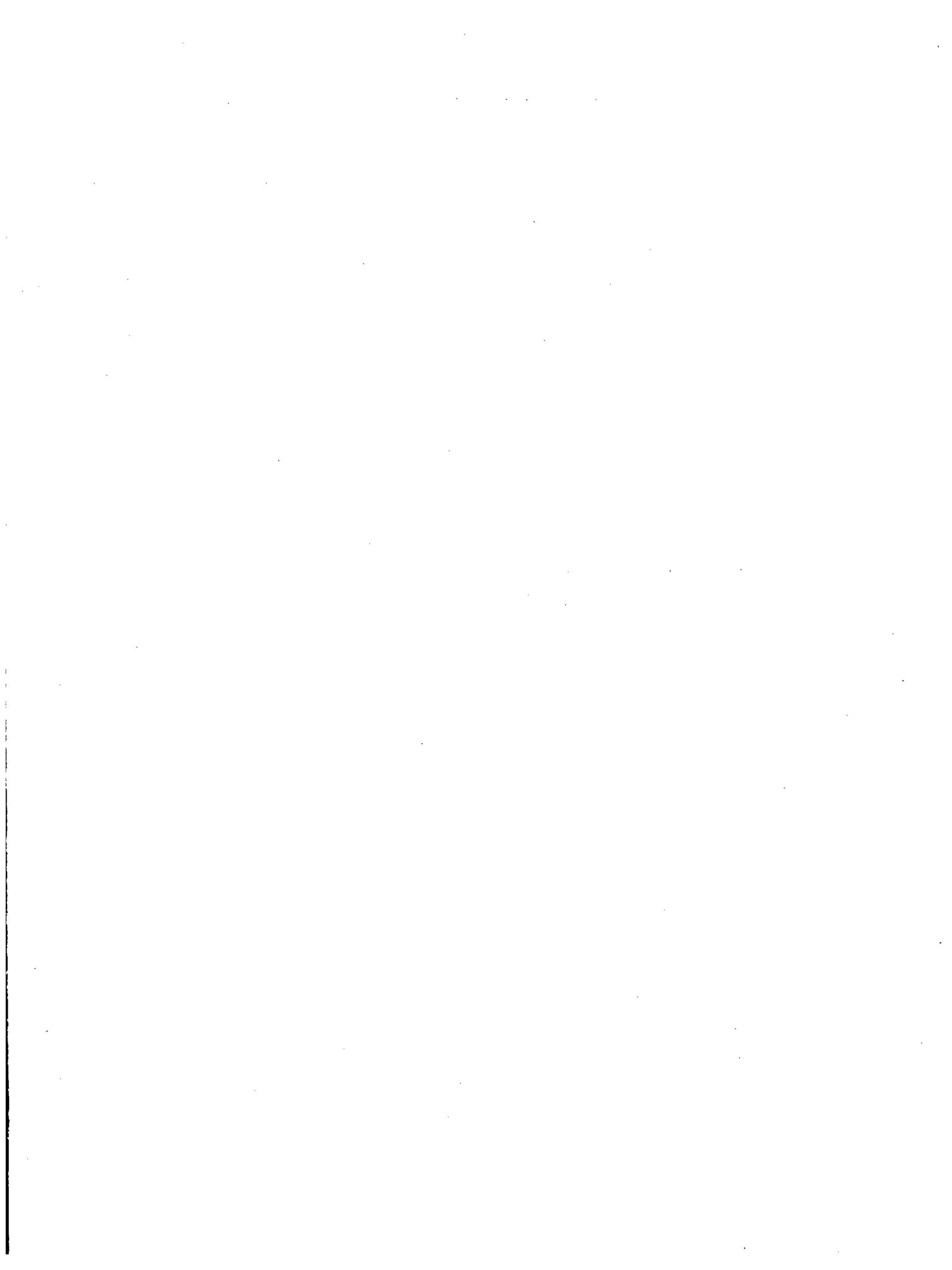
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15. NUMBER OF PAGES

16. PRICE



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